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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 WEBSTER S. LUCAS,

11 Plaintiff,

12 v.

13 LOS ANGELES COUNTY SHERIFFS
14 DEPT., et al.,

15 Defendants.
16

Case No. CV 17-3289-JFW (KK)

ORDER DISMISSING FIRST
AMENDED COMPLAINT WITH
LEAVE TO AMEND

17
18 **I.**

19 **INTRODUCTION**

20 Plaintiff Webster S. Lucas (“Plaintiff”), proceeding pro se and in forma
21 pauperis, filed a First Amended Complaint (“FAC”) pursuant to 42 U.S.C. § 1983
22 (“Section 1983”) against defendants Jim McDonnell, Deputy Sneed, and Paul
23 Pfrehm (“Defendants”) for violations of his Eighth and Fourteenth Amendment
24 rights. As discussed below, the Court dismisses the FAC with leave to amend.

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1 door.” Id. at 5. Plaintiff further alleges he was “forced to go to Cell # 44 where
2 his attackers lay waiting.” Id. As a result, Plaintiff claims he suffers “‘Mental
3 Flashes’ (of seeing himself in a pool of blood dying),” and “depression/anxiety and
4 nightmares,” all of which have led him to “receiv[e] psych. Medications – Seroquil
5 and Zoloff to deal with the mental illness associated with the flashes.” Id. at 5, 6.

6 Plaintiff additionally claims he is being retaliated against for filing a
7 complaint regarding the misidentification and incident at the Antelope Valley
8 Courthouse. See id.; Ex. A. Specifically, Plaintiff alleges defendant Sneed is
9 “retaliating against Plaintiff” for a grievance he filed on October 19, 2016. Id. at 6,
10 Ex. A. He additionally alleges defendant Prfehm “failed to discipline all parties
11 who retaliated against Plaintiff.” Id. at 2. Lastly, Plaintiff alleges defendant
12 McDonnell “failed to reprimand deputies who clearly retaliated against Plaintiff”
13 in addition to “fail[ing] to properly train deputies.” Id. at 6.

14 As a result of these claims, Plaintiff seeks a “settlement or that Plaintiff’s
15 demand [] be honored, and any other relief the Court deems appropriate.” Id. at 8.

16 IV.

17 STANDARD OF REVIEW

18 As Plaintiff is proceeding in forma pauperis, the Court must screen the
19 Complaint and is required to dismiss the case at any time if it concludes the action
20 is frivolous or malicious, fails to state a claim on which relief may be granted, or
21 seeks monetary relief against a defendant who is immune from such relief. 28
22 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A(b); see Barren v. Harrington, 152 F.3d
23 1193, 1194 (9th Cir. 1998).

24 In determining whether a complaint fails to state a claim for screening
25 purposes, the Court applies the same pleading standard from Rule 8 of the Federal
26 Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to
27 dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter,
28 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a

1 “short and plain statement of the claim showing that the pleader is entitled to
2 relief.” Fed. R. Civ. P. 8(a)(2).

3 A complaint may be dismissed for failure to state a claim “where there is no
4 cognizable legal theory or an absence of sufficient facts alleged to support a
5 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
6 (citation omitted). In considering whether a complaint states a claim, a court must
7 accept as true all of the material factual allegations in it. Hamilton v. Brown, 630
8 F.3d 889, 892-93 (9th Cir. 2011). However, the court need not accept as true
9 “allegations that are merely conclusory, unwarranted deductions of fact, or
10 unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th
11 Cir. 2008) (citation omitted). Although a complaint need not include detailed
12 factual allegations, it “must contain sufficient factual matter, accepted as true, to
13 ‘state a claim to relief that is plausible on its face.’” Cook v. Brewer, 637 F.3d
14 1002, 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.
15 Ct. 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it “allows
16 the court to draw the reasonable inference that the defendant is liable for the
17 misconduct alleged.” Cook, 637 F.3d at 1004 (citation omitted).

18 “A document filed pro se is to be liberally construed, and a pro se complaint,
19 however inartfully pleaded, must be held to less stringent standards than formal
20 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
21 2008) (citation omitted). “[W]e have an obligation where the p[laintiff] is pro se,
22 particularly in civil rights cases, to construe the pleadings liberally and to afford
23 the p[laintiff] the benefit of any doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th
24 Cir. 2012) (citation omitted).

25 If the court finds the complaint should be dismissed for failure to state a
26 claim, the court has discretion to dismiss with or without leave to amend. Lopez v.
27 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted
28 if it appears possible the defects in the complaint could be corrected, especially if

1 the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,
2 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a
3 complaint cannot be cured by amendment, the court may dismiss without leave to
4 amend. Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d
5 962, 972 (9th Cir. 2009).

6 V.

7 DISCUSSION

8 A. PLAINTIFF FAILS TO STATE AN OFFICIAL CAPACITY CLAIM 9 AGAINST DEFENDANTS

10 1. Applicable Law

11 An “official-capacity suit is, in all respects other than name, to be treated as
12 a suit against the entity.” Kentucky v. Graham, 473 U.S. 159, 166, 105 S. Ct.
13 3099, 87 L. Ed. 2d 114 (1985); see also Brandon v. Holt, 469 U.S. 464, 471-72,
14 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985); Larez v. City of Los Angeles, 946 F.2d
15 630, 646 (9th Cir. 1991). Such a suit “is not a suit against the official personally,
16 for the real party in interest is the entity.” Graham, 473 U.S. at 166. Because no
17 respondeat superior liability exists under Section 1983, a state actor is liable only
18 for injuries that arise from an official policy or longstanding custom. Monell v.
19 Dep’t of Soc. Servs. of City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L.
20 Ed. 2d 611 (1978); see also City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct.
21 1197, 103 L. Ed. 2d 412 (1989). A plaintiff must allege facts to establish “that a
22 [state] employee committed the alleged constitutional violation pursuant to a
23 formal governmental policy or a longstanding practice or custom which constitutes
24 the standard operating procedure of the local governmental entity.” Gillette v.
25 Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (citations and internal quotation
26 marks omitted). In addition, a plaintiff must allege the policy was “(1) the cause in
27 fact and (2) the proximate cause of the constitutional deprivation.” Trevino v.

1 Gates, 99 F.3d 911, 918 (9th Cir. 1996) (citing Arnold v. Int'l Bus. Machines
2 Corp., 637 F.2d 1350, 1355 (9th Cir. 1981)).

3 **2. Analysis**

4 Here, assuming Plaintiff has adequately alleged a constitutional violation, he
5 fails to state a claim against Defendants in their official capacity. Plaintiff fails to
6 allege Defendants were acting pursuant to any policy, practice, or custom of the
7 Los Angeles Sheriff's Department on the day of the alleged incident that was "(1)
8 the cause in fact and (2) the proximate cause of the constitutional deprivation."
9 Trevino v. Gates, 99 F.3d at 918. Hence, Plaintiff's claims against Defendants in
10 their official capacity must be dismissed. See Gillette, 979 F.2d at 1346.

11 **B. PLAINTIFF FAILS TO STATE A FIRST AMENDMENT** 12 **RETALIATION CLAIM AGAINST ANY DEFENDANT**

13 **1. Applicable Law**

14 Allegations of retaliation against an inmate's First Amendment rights to
15 speech or to petition the government may support a Section 1983 claim. See Pratt
16 v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995). Within the prison context, a viable
17 claim of First Amendment retaliation entails five elements: (1) the plaintiff
18 engaged in protected conduct; (2) an assertion that a state actor took some adverse
19 action against the plaintiff; (3) the adverse action was "because of" the plaintiff's
20 protected conduct; (4) the adverse action caused harm that was more than minimal
21 or "would chill or silence a person of ordinary firmness from future First
22 Amendment activities;" and (5) the action did not reasonably advance a legitimate
23 correctional goal. Rhodes v. Robinson, 408 F.3d 559, 562, 567-68, n.11 (9th Cir.
24 2005).

25 **2. Analysis**

26 Here, Plaintiff appears to allege a First Amendment retaliation claim against
27 all three Defendants. However, Plaintiff fails to present any facts from which the
28 Court can conclude what actions were specifically taken by each Defendant as a

1 result of Plaintiff's complaints regarding the misclassification. Instead, he simply
2 states Defendants are "retaliating" against him because he filed a complaint. See
3 Dkt. 9 at 2-3, 5-7. Such conclusory allegations are insufficient to state a claim.
4 Iqbal, 556 U.S. at 676. Thus, Plaintiff's First Amendment retaliation claims must
5 be dismissed.

6 **C. PLAINTIFF FAILS TO STATE AN EIGHTH AMENDMENT**
7 **DELIBERATE INDIFFERENCE CLAIM FOR FAILURE TO**
8 **PROTECT AGAINST DANGEROUS CONDITIONS AGAINST**
9 **DEFENDANT JIM MCDONNELL**

10 **1. Applicable Law**

11 Prison officials have a duty to take reasonable steps to protect inmates from
12 physical harm. See Farmer v. Brennan, 511 U.S. 825, 832, 114 S. Ct. 1970, 128 L.
13 Ed. 2d 811 (1994). Specifically, "prison officials have a duty . . . to protect
14 prisoners from violence at the hands of other prisoners." Id. at 833.

15 To state a claim for such an Eighth Amendment violation, an inmate must
16 show both objective and subjective components. Clement v. Gomez, 298 F.3d
17 898, 904 (9th Cir. 2002). The objective component requires an "objectively
18 insufficiently humane condition violative of the Eighth Amendment" which poses
19 a substantial risk of serious harm. Osolinski v. Kane, 92 F.3d 934, 938 (9th Cir.
20 1996). The subjective component requires prison officials acted with the culpable
21 mental state, which is "deliberate indifference" to the substantial risk of serious
22 harm. Farmer, 511 U.S. at 837-38; Estelle v. Gamble, 429 U.S. 97, 104-06, 97 S.
23 Ct. 285, 50 L. Ed. 2d 251 (1976). "[A] prison official cannot be found liable under
24 the Eighth Amendment for denying an inmate humane conditions of confinement
25 unless the official knows of and disregards an excessive risk to inmate health or
26 safety; the official must both be aware of facts from which the inference could be
27 drawn that a substantial risk of serious harm exists, and he must also draw the
28 inference." Farmer, 511 U.S. at 837. Additionally, claims of negligence or gross

1 negligence are not actionable under Section 1983 in the prison context. Farmer,
2 511 U.S. at 835-36, n.4.

3 **2. Analysis**

4 Here, Plaintiff fails to state an Eighth Amendment claim against defendant
5 Jim McDonnell. Plaintiff does not provide any facts alleging defendant Jim
6 McDonnell knew Plaintiff was a sex offender when the alleged misclassification
7 occurred. Estelle v. Gamble, 429 U.S. at 104-06. Similarly, Plaintiff fails to
8 present any facts from which the Court can conclude defendant Jim McDonnell
9 had direct or personal knowledge of the risk Plaintiff would face being placed in
10 general population while classified as a sex offender. Iqbal, 556 U.S. at 676.
11 Furthermore, Plaintiff does not allege defendant Jim McDonnell failed to remedy
12 the mistake upon discovering the misclassification. See Farmer, 511 U.S. at 835-
13 36, n.4 (holding actions must be more than negligent to state a deliberate
14 indifference claim).

15 To the extent Plaintiff alleges the failure to properly classify him was the
16 result of defendant Jim McDonnell's failure to train, Plaintiff still does not state a
17 claim. In order to sufficiently state a claim for failure to train, Plaintiff must allege
18 facts to show the failure to train is "so obvious" and "so likely to result in the
19 violation of constitutional rights," that "the failure to provide proper training may
20 fairly be said to represent a policy for which the [entity] is responsible, and for
21 which the [entity] may be held liable if it actually causes injury." Manzanillo v.
22 Lewis, No. 12-CV-05983-JST, 2017 WL 131979, at *10 (N.D. Cal. Jan. 12, 2017)
23 (citing City of Canton, Ohio v. Harris, 489 U.S. 378, 390, 109 S. Ct. 1197, 1200,
24 103 L. Ed. 2d 412 (1989)).

25 Thus, Plaintiff has failed to state an Eighth Amendment deliberate
26 indifference claim for failure to protect against an "objectively insufficiently
27 humane condition" against defendant Jim McDonnell. Osolinski, 92 F.3d at 938.

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1 VI.

2 **LEAVE TO FILE A FIRST AMENDED COMPLAINT**

3 For the foregoing reasons, the Complaint is subject to dismissal. As the
4 Court is unable to determine whether amendment would be futile, leave to amend
5 is granted. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
6 curiam).

7 Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of the
8 service date of this Order, Plaintiff choose one of the following two options:

9 1. Plaintiff may file a First Amended Complaint to attempt to cure the
10 deficiencies discussed above. **The Clerk of Court is directed to mail Plaintiff a**
11 **blank Central District civil rights complaint form to use for filing the First**
12 **Amended Complaint, which the Court encourages Plaintiff to use.**

13 If Plaintiff chooses to file a First Amended Complaint, Plaintiff must clearly
14 designate on the face of the document that it is the "First Amended Complaint," it
15 must bear the docket number assigned to this case, and it must be retyped or
16 rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not
17 include new defendants or new allegations that are not reasonably related to the
18 claims asserted in the Complaint. In addition, the First Amended Complaint must
19 be complete without reference to the Complaint or any other pleading, attachment,
20 or document.

21 An amended complaint supersedes the preceding complaint. Ferdik v.
22 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will
23 treat all preceding complaints as nonexistent. Id. Because the Court grants
24 Plaintiff leave to amend as to all his claims raised here, any claim raised in a
25 preceding complaint is waived if it is not raised again in the First Amended
26 Complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012).

27 2. Alternatively, Plaintiff may voluntarily dismiss the action without
28 prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **The Clerk of Court**

1 is directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court
2 encourages Plaintiff to use.

3 The Court advises Plaintiff that it generally will not be well-disposed toward
4 another dismissal with leave to amend if Plaintiff files a First Amended Complaint
5 that continues to include claims on which relief cannot be granted. “[A] district
6 court’s discretion over amendments is especially broad ‘where the court has
7 already given a plaintiff one or more opportunities to amend his complaint.’”
8 Ismail v. County of Orange, 917 F. Supp.2d 1060, 1066 (C.D. Cal. 2012) (citations
9 omitted); see also Ferdik, 963 F.2d at 1261. Thus, **if Plaintiff files a First
10 Amended Complaint with claims on which relief cannot be granted, the First
11 Amended Complaint will be dismissed without leave to amend and with
12 prejudice.**

13 **Plaintiff is explicitly cautioned that failure to timely file a First
14 Amended Complaint will result in this action being dismissed with prejudice
15 for failure to state a claim, prosecute and/or obey Court orders pursuant to
16 Federal Rule of Civil Procedure 41(b).**

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18 Dated: July 11, 2017



19 HONORABLE KENLY KIYA KATO
20 United States Magistrate Judge
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